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FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35966]

Martin Marietta Materials, Inc.—Acquisition of Control Exemption—Rock & Rail, Inc.

Martin Marietta Materials, Inc. (MMM), a noncarrier, has filed a verified notice of exemption under 49 C.F.R. § 1180.2(d)(2) to acquire control of Rock & Rail, Inc. (RRI), a Class III rail carrier.

According to MMM, it currently controls Alamo North Texas Railroad (ANT),<sup>1</sup> a Class III rail carrier, which has lines in Wise County, Tex., and Alamo Gulf Coast Railroad (AGC), a Class III rail carrier, which has lines in Bexar County, Tex. MMM states that RRI has lines in Pueblo and Canon City, Colo., and that the proposed transaction would not connect ANT, AGC, or RRI. MMM and RRI have signed a letter of intent<sup>2</sup> by which MMM will acquire indirect ownership of 100% of the stock of RRI. The transaction is scheduled to be consummated on or after November 8, 2015, the effective date of the exemption.

MMM states that: (i) the railroads do not connect with each other or any railroad in their corporate family; (ii) the proposed transaction is not part of a series of anticipated

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<sup>1</sup> See Martin Marietta Materials, Inc.—Continuance in Control Exemption—Alamo N. Tex. R.R., FD 34266 (STB served Dec. 13, 2002).

<sup>2</sup> An unredacted copy of the letter of intent was filed concurrently under seal, along with a motion for protective order pursuant to 49 C.F.R. § 1104.14(b). That motion will be addressed in a separate decision.

transactions that would connect the railroads with each other or any railroad in their corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval of requirements of 49 U.S.C. § 11323. See 49 C.F.R. § 1180.2(d)(2).

Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for the labor protection for transactions under §§ 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Petitions to stay must be filed no later than October 30, 2015 (at least seven days before the exemption becomes effective).

An original and ten copies of all pleadings referring to Docket No. FD 35966, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Ave., N.W., Suite 300, Washington, DC 20037.

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Decided: October 20, 2015.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.